IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2222 OF 1999

1. Neon Laboratories Limited,
   a Public Limited Company
   incorporated and registered
   under the provisions of the
   Companies Act, I of 1956 and
   having its office at 140,
   Damji Shamji Ind. Complex,
   Mahakali Caves Road, Andheri
   (East), Mumbai - 400 093

2. Babulal K. Jain, of Mumbai
   Indian Inhabitant, a
   Director of the Petitioner
   No.1 abovenamed, having his
   office at 140, Damji Shamji
   Industrial Complex, Mahakali
   Caves Road, Andheri (East),
   Mumbai - 400 093 .. Petitioners.

V/s.

1. Union of India,
   Ministry of Law, Justice
   Aayakar Bhavan Annex, New
   Marine Lines, Mumbai 400 020

2. Joint Director General of
   Foreign Trade, having his
   office at New CGO Building,
   New Marine Lines, Mumbai 20

3. The Designated Authority of
   Pass Book Scheme having his
   office at New Customs House
   3rd Floor, Old Building,
   Mumbai - 400 038 .. Respondents.

Mr.N.M. Shah with Mr.Naresh Thacker for the petitioners.

Mr.S.M. Shah with Mr.Y.R. Mishra for the respondents.

CORAM : R.M. LODHA &
J.P. DEVADHAR, JJ.

DATED : 23RD MARCH, 2006.

ORAL JUDGMENT (Per R.M. Lodha, J.) :

The petitioners seek to challenge the impugned order dated 12th May, 1999 passed by the Joint Director General of Foreign Trade, Mumbai whereby the exports made by the first petitioner vide six shipping bills from 27th February, 1996 to 5th November, 1996 were held not covered by the provisions of the Pass Book scheme.

2. Neon Laboratories Limited - the first petitioner is a company registered and incorporated under the provisions of the Companies Act, 1956. The second petitioner is one of the directors of the first petitioner - company. Hereinafter we shall refer the petitioners as ‘Neon’. Neon claims to be engaged in the manufacture of Hi-Tech Parentals and Pharmaceutical formulations since 1984. It has its own plant for manufacture of injectable and oral preparations. It claims to be specialised in Anaeshetic & Anti Cancer drugs. Neon applied for Pass Book under the Pass Books Scheme, Export and Import Policy, 1992-1997. On 23rd August, 1995, the Pass Book is said to have been issued immediately thereafter. Neon after the issuance of the said Pass Book exported their products as under :

Shipping Bill No. & Date	Item	FOB Value Rs.
724928 - 02.02.96	Amplicillin Capsules	8,80,680.00
730272 - 11.03.96	Tetracycline Capsules	8,85,308.00
730255 - 11.03.96	Chloroquine Phosphate Tabs.	12,51,950.00
804444 - 23.08.96	Paracetamol Tablets	4,66,622.00
804451 - 23.08.96	Paracetamol Tablets	4,76,145.00
837182 - 05.11.96	Ampicillin Capsules	8,42,973.00
		48,03,658.00

3. Neon applied to the Designated Authority of Pass Book Scheme - respondent No.3 (hereinafter to be referred to as 'the Designated Authority') on 14th March, 1997 for necessary endorsement in the Pass Book regarding credit of duty available on it in respect of above referred exports. On 30th August, 1998 the office of Designated Authority made an endorsement, 'Loan Licence is not allowed'. Neon took up the matter with the Designated Authority. However, the Designated Authority on 30th August, 1998 again made an endorsement, 'correctly rejected'. Neon filed a writ petition before this Court bearing Writ Petition No.969 of 1999. The Division Bench by its order dated 12th April, 1999 set aside the endorsement and directed the Designated Authority to clear the Neon and passed a speaking order. Pursuant to the orders of the Division Bench, the Designated Authority heard Neon and by its order dated 12th May, 1999 rejected the Neon's claim of credit in the Pass

Book Scheme.

4. The Pass Book Scheme under the Export and Import Policy, 1992-1997 issued by the Ministry of Commerce, Government of India is thus :

> "A Pass Book Scheme shall be available for some categories of exporters. A manufacturer-exporter or an exporter granted an Export House / Trading House / Star Trading House / Super Star Trading House certificate, shall be eligible to avail the benefits of the Pass Book Scheme. He may apply to the designated authority in the prescribed form for issue of the Pass Book. The designated authority may, after considering such matters as may be specified, issue a Pass Book to the applicant.
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> The Pass Book scheme shall apply only for the export of products where standard input / output norms have been published. The Director General of Foreign Trade shall appoint a designated authority, being an officer of the rank not less than a Deputy Director General in each of the Customs House at Delhi, Bombay, Calcutta and Madras and such other Customs Houses as may be specified by him in this behalf. The designated authority shall be the competent authority in respect of matters concerning the Pass Book scheme and shall discharge his functions under the overall direction and supervision of the Collector of Customs.
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> Upon the export of goods by a Pass Book holder, the designated authority shall calculate, on the basis of the standard input / output norms, the import content of the said exports and determine the basic customs duty payable on such imports. He shall credit the said amount in the Pass Book. Upon imports being made by the Pass Book holder, the credits may be utilised to pay the basic and additional customs duties on the imported goods. Payment shall be by a debit entry

> to be made in the Pass Book by the designated authority. The export goods shall not be eligible for drawback on the inputs for which credit in the Pass Book is taken. The import and export shall be made through the same port. Any goods which are not included in the Negative List of Imports or in the list of Sensitive Items may be imported under this scheme. The Pass Book shall be valid for a period of two years from the date of issue and may be renewed from time to time."

5. It is admitted case of Neon that it was not able to meet the requisite export of Pharmaceutical products. They made an application to the concerned authority under the Drugs and Cosmetics Act, 1940 and the Drugs and Cosmetics Rules, 1945 for grant of Loan Licence. It is also an admitted case of the Neon that under this Act, the Licensing Authority granted Loan Licence to manufacture for sale (or for distribution of) drugs other than those specified in (Schedule C, C(1) and X) on 1st July, 1996. Under the said Loan Licence, Neon was granted a licence to manufacture the drugs as set out in the licence specified in Drugs and Cosmetics Rules, 1945 other than those specified in Schedule C, C(1) and X at the premises of M/s.Lesanto Laboratories and M/s.Milan Laboratories (India). It is Neon’s case that the exported goods were manufactured by M/s.Lesanto Laboratories in their premises situated at Plot No.11, Survey No.53, Manor Road, Palghar East, District Thane and exported under the Neon’s

label. Neon's case is that the Loan Licence having been granted by the Licensing Authority under the Drugs and Cosmetics Act, 1940 and Drugs and Cosmetics Rules, 1945 to manufacture for sale of drugs other than those specified in Schedule C, C(!) and X and, therefore, the exported goods have to be treated as manufactured by it and since the Neon is exporter-manufacturer, it is entitled to endorsement of credit in the Pass Book Scheme.

6. The only question before us is: is Neon a 'manufacturer - exporter' within the meaning of Pass Book Scheme framed under the Export and Import Policy, 1992-1997 issued by the Ministry of Commerce, Government of India ?'

7. As the scheme itself suggests that the Pass Book Scheme is available for some categories of exporters. In so far as the present case is concerned, if the Neon is not manufacturer of the exported goods, obviously it will not be entitled to the benefit under the Pass Book Scheme.

8. It transpires from the scheme that upon the export of goods by the Pass Book holder, calculation is to be made on the basis of the standard input / output norms, the import content of

the said exports and determine the basic customs duty payable on such imports and then credit the said amount in the Pass Book by the Designated Authority. Upon imports being made by the Pass Book holder, the credits may be utilised to pay the basic and additional customs duties on the imported goods. When the scheme talks of 'manufacturer' for the benefit under the Pass Book Scheme, what is contemplated is the actual manufacturer of goods and not through the agency of somebody else. The expression 'manufacturer' in the Pass Book Scheme cannot be said to cover a person who is not actually manufacturer of goods but gets the goods manufactured through someone else for whatever reason. It is true that the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder provides for Loan Licence to manufacture permissible drugs but the licence contemplates under the Drugs and Cosmetics Act and the Rules framed thereunder shall not entitle the licensee to the benefit of the Pass Book Scheme because such manufacturer is not actual manufacturer - exporter contemplated under the Pass Book Scheme. The Loan Licence, thus, issued to the Neon by the Licensing Authority under the Drugs and Cosmetics Act and the Rules framed thereunder shall not make Neon, 'manufacturer - exporter' under the Pass Book Scheme.

9. The expression ‘manufacturer - exporter’ under the Scheme does not include deemed manufacturer or licensee manufacturer. For the benefit of the Pass Book Scheme, the exporter has to be manufacturer himself. Neon may be ‘manufacturer’ for the purposes of Loan Licence under the Drugs and Cosmetics Act, 1940 and the Rules framed thereunder or under the Central Excise Act and the Rules framed thereunder, but in our considered opinion, Neon being not actual manufacturer and only Loan Licensee - it cannot be said to be ‘manufacturer - exporter’ for the purposes of the Pass Book Scheme.

10. In the reply-affidavit filed by the respondent No.2, stand has been taken that the benefit of Pass Book is only available to the manufacturer - exporter or to an exporter holding the status of export house / trading house / star trading house / super star trading house only and not otherwise. There is merit in the stand set up by the respondent No.2 that Neon is not the status- holder but appears to be merchant exporter having got the exported goods manufactured through other agency namely M/s.Lesanto Laboratories under the Loan Licence, though permitted as per the provisions of the Drugs and Cosmetics Act, 1940 and Rules framed thereunder.

11. The learned counsel for the petitioner relied upon the judgment of the Gujarat High Court in the case of M/s.Indica Laboratories V/s. Union of India reported in 1990 (50) E.L.T. 210 in support of his contention that the goods manufactured on Loan Licence under the control and supervision of Loan Licensee is treated as 'manufacture' and Loan Licensee is treated as 'manufacturer'. The issue before the Gujarat High Court was, as to whether the Loan Licensee governed by the Drugs and Cosmetics Act, 1940 read with Drugs and Cosmetics Rules, 1945 if gets the goods manufactured under his control, supervision and direction and out of the raw material supplied by him, is 'manufacturer' within the meaning of Section 2(f) of the Central Excise Act. Dealing with the said issue, the Gujarat High Court held that in the light of the construction of Section 2(f) of the Central Excise Act having been given by the Supreme Court, the Loan Licensees are also 'manufacturer' within the meaning of the term as envisaged under the Central Excise Act and Rules. The Gujarat High Court held that the Loan Licensees were manufacturers in the context of Section 2(f) of the Central Excise Act. We are afraid the analogy of Section 2(f) of the Central Excise Act cannot be applied for the purposes of expression 'manufacturer'

in the Pass Book Scheme. The term ‘manufacturer - exporter’ in Pass Book Scheme has to be given natural meaning contemplated under the scheme and that would be the actual manufacturer of exported goods holding the status of export house / trading house / star trading house / super star trading house.

12. We, thus, find no infirmity in the order dated 12th May, 1999 passed by the Joint Director General of Foreign Trade, Mumbai.

13. The writ petition has no merit and is dismissed with no order as to costs.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)